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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 473

COYNE ELECTRICAL SCHOOL, INC.,
Petitioner,

vs.

F. J. BUCKLEY AND E. H. BUCKLEY, DOING BUSINESS AS F. J. BUCKLEY AND COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, AND BRIEF IN SUPPORT THEREOF

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No. .....

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COYNE ELECTRICAL SCHOOL, INC.,
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vs.

F. J. BUCKLEY AND E. H. BUCKLEY, DOING BUSINESS AS F. J. BUCKLEY AND COMPANY,
Respondents.

PETITION FOR CERTIORARI

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

COYNE ELECTRICAL SCHOOL, INC., defendant below, respectfully prays that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois, First District (the highest court of that state in which a decision could be had for the purposes of this case), rendered by a divided Court, which reversed the judgment of the trial court which had dismissed the plaintiff's complaint in an action to recover contingent fees for the procurement of contracts with the United States Signal Corps for the training of military personnel at petitioner's school. The judgment of the Appellate Court became final on September 21, 1951.

SUMMARY STATEMENT OF THE MATTER INVOLVED

This action is one of the well-known "5% commission cases" (as they are commonly called) growing out of World War II. It is a matter of common knowledge that during the recent war thousands of selected military personnel were given thorough and seasoned training in the highly important and highly expert fields of radio, electronics, mechanics, etc. The Coyne School[1] is admittedly one of the leading vocational schools of the United States, and as such was selected by the War Department for training more than 6500 specially chosen military personnel in those expert fields.[2] Buckley's claim against the Coyne School is for approximately $200,000 (R. 323, 326), and is for contingent fees as a purported "agent" in allegedly procuring Coyne's tuition contracts with the War Department. But Buckley had at least three other school contracts for contingent fees (See R. 54 and 328). Buckley therefore gave only part-time services to Coyne for the period of about six months, in Washington, in return for that large claim of contingent fees. During that time Coyne paid Buckley the sum of $4,563.13 on account of such fees (R. 3 and 29).

A further statement of the facts appears in the accompanying Brief.

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[1]Hereafter, for reasons of convenience, the petitioner will be referred to as *Coyne* or *the Coyne School*, and the alleged partnership of the respondents will be referred to as *Buckley*.

[2]The evidence (R. 332) shows a list of 19 schools throughout the country where a total of 48,300 of such specially selected personnel were given extensive and costly training by the Signal Corps in the technical fields mentioned. The Coyne School was regarded by the Government as "in the upper 10%" of this list of schools (R. 17), and it appears (R. 332-3) that it was the top school, except one, in the total number of students trained by it for the Signal Corps.

Coyne's Defense of Illegality

Coyne's major defense is that Buckley's alleged claim is entirely illegal and void under federal law, as being against public policy. Buckley's own testimony shows repeatedly that he persistently tried to get Coyne to sign a formal written contract for his contingent fees; but the record shows that Coyne persistently refused to sign such a formal contract on the ground that such a contract would violate the federal law concerning contingent fees.

The Trial Court Sustains Coyne's Contention of Illegality

The trial below was on the limited question of Buckley's right to an accounting (R. 10). On hearing before a Master more than 2000 pages of evidence were taken and 174 separate exhibits introduced. The Master submitted a report in favor of Buckley. The trial court rejected that report (after a five day hearing on it) and dismissed Buckley's claim "for want of equity." That court entered a "final decree" in which it completely sustained Coyne's contention of illegality. The trial court's judgment specifically found, among other things (R. 44-48), that Buckley's alleged "agency" was—

> "Illegal and void as against public policy, in that it involves the payment of contingent fees for securing War contracts with the Federal Government."

Buckley's Appeal

Buckley took the case to the Appellate Court of Illinois, where the judgment of the trial court was reversed (by a 2 to 1 division) and the case remanded with directions to enter a decree in favor of Buckley "for an accounting." Coyne thereupon tried to take the case to the Supreme Court of Illinois by a petition asking that Court to review the judgment of the Appellate Court. But the State Supreme Court refused even to consider the case, and denied

Coyne's petition for appeal on September 21, 1951.[3] Thereupon the Appellate Court judgment became final for purposes of review in this Court as of the date last mentioned.

Buckley the Sole School "Agent" Operating in Washington

An important point for the purposes of this Petition is the fact that Buckley was absolutely the only school *agent* operating in Washington during World War II, who was attempting to set himself up as a middleman engaged in soliciting these vocational school training contracts on a contingent fee basis. That fact is clearly pertinent in considering the public policy aspects of Buckley's claim, in view of the language of Executive Order 9001, hereinafter mentioned. In all his long testimony as a witness about his activities in Washington, Buckley was not able to mention another individual who was attempting to carry on the same *agency* activities for these vocational schools. Indeed, the record shows positively that there was no other such *agent,* in the entire war effort of the nation; the idea was originated by Buckley and he was playing a lone hand in that

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[3]The Appellate Court of Illinois is "the highest court of the State in which a decision could be had" (under the record in this case) as provided by the Judicial Code 28 U.S.C. Sec. 1257, concerning certiorari from state courts. This is the direct holding in *Chesapeake & Ohio R.R. Co.* v. *Mihas,* 280 U.S. 102 (Ill. 1929); and *Minneapolis etc. R.R. Co.* v. *Rock,* 279 U.S. 410 (Ill. 1929). In those two cases certiorari was granted by the Supreme Court of the United States to the Appellate Court of Illinois.

The rule has been the same in the Supreme Court of the United States for more than three-quarters of a century. See *Gregory* v. *McVeigh,* decided in 1875 and reported in 23 Wall. 294, 23 L. Ed. 156, where the Court said:

> "If a cause cannot be taken to the highest court of a state, except by leave of the court itself, a refusal of the court upon proper application made to grant the leave, is equivalent to a judgment of affirmance, and is such a final judgment as may be made the basis of proceedings under the appellate jurisdiction of this court."

agency field. Thus the Army officer, Colonel Rooks, who had charge of all preliminary contract recommendations for these vocational schools, testified flatly that Buckley was operating alone, and that he was the only individual in Washington "acting on a commission basis" in an effort to procure these vocational school contracts (R. 337).[4]

Executive Order 9001 Forbidding "Contingent Fees"

It is a matter of common knowledge that the exorbitant contingent fees charged and collected by so-called *agents* for services in procuring war contracts between their principals and the Government have been the subject of much concern to the public and to Congress and to the Administration: first during the Civil War, next during World War I, and especially during World War II. This Honorable Court first took a definite stand in striking down such *agency* contracts as long ago as 1864, in the leading case of *Providence Tool Co.* v. *Norris,* 2 Wall. 45. Later cases in which this Court has spoken in a similar vein on the subject will be discussed in the accompanying Brief.

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[4]Colonel Rooks, the Army officer who was thoroughly familiar with Buckley's activities, as well as the activities of all other vocational schools, said of Buckley:

> "He was the only agent I had any knowledge of acting on a commission basis." (Original Transcript 337.)

Colonel Rooks testified that all the other schools dealt with the Government through their regular full time employees.

Colonel Rooks went further, and said of his talk with Coyne's President, about September 17, 1942 (R. 339):

> "Mr. Lewis told me on one occasion to the effect that he had been led to believe that all his contracts had been coming through as a result of the agency and the intervention of Mr. Buckley and I told him that it was not necessary for anyone to have a representative in Washington, that Buckley had nothing to do with the obtaining of contracts, or words to that effect. . . . Mr. Buckley was never instrumental in obtaining any contracts on behalf of Coyne, to my knowledge."

It is also well known that upon the outbreak of World War II a hoard of such *agents* descended upon Washington, many of them with "their offices in their hats."[5] The whole matter was of such public importance that Congress took note of it in the First War Powers Act of 1941 (Act of December 18, 1941, 55 Stat. 839; 50 U.S.C. App. § 611).

Title II of the First War Powers Act provided in relevant part as follows:

> "*War contracts exempt from certain restrictions upon authorization by President.*
>
> "The President may authorize any department or agency of the Government . . . to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war . . ."

Executive Order 9001 (6 F.R. 6787) was issued by the President on December 27, 1941, and provided in relevant part as follows:

> "5. Every contract entered into pursuant to this order shall contain a warranty by the contractor in substantially the following terms:
>
> "The contractor warrants that he has not employed any person to solicit or secure this contract upon any

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[5]This expression about agents with "their offices in their hats" applies particularly to Buckley, since he openly admitted on the stand that he had no office in Washington when he claims to have made the contract with the Coyne School, but was operating from the Army and Navy Club in Washington where he lived, and was even using the Club's stationery in soliciting these school contracts. The expression quoted is from the testimony of a Navy Department official before the House Committee on Naval Affairs, April 2, 1943. See printed Hearings of the Committee, 78th Congress, 1st Session, Vol. 1, p. 233.

agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business."

The purpose of the cited section of the Act, as its title states, was to exempt "war contracts . . . from certain restrictions". These "restrictions" were contained in "provisions of law relating to the making, performance, amendment, or modification of contracts". In general, these "provisions of law" require advertising for bids, opening of bids, performance bonds, and the like.

The purpose of paragraph 5 of the Executive Order relating to the warranty against contingent fees was to protect the Treasury against the inclusion in the contract price of any excessive costs due to fees payable to so-called experts in the procurement field. The Government was aware that the war program would bring with it a tremendous opportunity for profiteering and personal aggrandizement. The problem of acquainting the procurement divisions with sources of supply would create a class of so-called experts who had what might be called the "know how" of war procurement red tape. They knew where to go and whom to see. This facility of "knowing your way around" was something new for manufacturers in the early stages of the war program.

Buckley's "Contingent Fee" Contract Void under General Federal Law

It will be particularly pointed out in the accompanying Brief that Buckley's alleged "contingent fee" contract was

utterly void and illegal under Executive Order 9001, above discussed. But as pointed out in the accompanying Brief, Buckley's alleged "contingent fee" contract was also in clear violation of the settled law of the United States as laid down by this Court. These legal questions are all discussed in the accompanying Brief.

STATEMENT AS TO JURISDICTION

Jurisdiction of this Court generally to review this case is invoked under Section 1257 of the Judicial Code (28 U.S.C. 1257), and particularly by paragraph (3) thereof concerning certiorari to review final judgments or decrees "rendered by the highest court of a State in which a decision could be had."

The particular grounds upon which the judgment of the Illinois Appellate Court (although an intermediate Appellate Court of that State) is reviewable by this Court, are set out in the accompanying footnote.[6]

APPLICATION OF SUPREME COURT RULE NO. 38, PAR. 5(a).

It is respectfully urged that in accordance with the United States Supreme Court Rule No. 38, paragraph 5(a), the Su-

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[6]The judgment of the Appellate Court of Illinois, First District, from which this review is sought, was originally filed June 1, 1951 (R. 363). Thereafter Coyne filed a Petition for Rehearing which was denied by the Illinois Appellate Court June 13, 1951 (R. 363). Thereafter Coyne asked the Illinois Appellate Court for a Certificate of Importance permitting an appeal to the Supreme Court of Illinois, but the Illinois Appellate Court denied that application for review by the highest court of Illinois on June 22, 1951 (R. 363).

Under the applicable statutes of the State of Illinois, Coyne thereupon asked the Supreme Court of Illinois directly to review the case. That Petition for Leave to Appeal to the Supreme Court of Illinois was denied by that Court September 12, 1951 (R. 444). A motion for reconsideration was denied September 21, 1951 (R. 453). Thereafter the judgment of the Appellate Court of Illinois became final and reviewable, as of the date last mentioned, under the Judicial Code of the United States as above cited.

preme Court of the United States exercise its sound judicial discretion and grant a review on writ of certiorari, because the Appellate Court of Illinois, and the Supreme Court of Illinois by its denial of Coyne's petition for leave to appeal, have totally and completely failed to recognize that the validity of contingent fee agreements to procure federal contracts and the interpretation of Executive Order 9001 is a matter of federal law and of federal public policy and not of state law.

The Opinion of the Appellate Court states that the existence of such a contingent fee contract "necessarily presents the following questions for consideration: (1) Is such a contract void in the absence of any evidence that the parties contemplated the use of influence or employment of means contrary to public policy to secure such contracts from the government? (2) Does the contract violate regulation 9001? (3) Does the evidence clearly bring plaintiffs within the exception in regulation 9001?"

In discussing the questions which the Appellate Court Opinion raises, that Court has not directed its attention in any fashion to the fact that all of these issues must be resolved on the basis of federal law and not state law. This despite the fact that a controlling decision of the Supreme Court of the United States was cited to this effect in our brief before the Appellate Court. This decision, which makes the rule eminently clear, is *United States* v. *Allegheny County* (1944), 322 U.S. 174. In that case the Court said:

> "The validity and construction of contracts through which the United States is exercising its constitutional functions, and consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any state."

In the able and dissenting Opinion of the Court below, another decision of the Supreme Court of the United States is

cited to this same effect, that is, *Sage* v. *Hampe,* 235 U.S. 99, wherein the Supreme Court of the United States reversed on grounds of public policy a judgment of a state court, affirmed by the Supreme Court of Kansas, and said:

> "The case at first sight seems like those in which a State decides to enforce or not to enforce a domestic contract notwithstanding or because of its tendency to cause a breach of the law of some other State. *Graves* v. *Johnson,* 179 Massachusetts 53, 156 Massachusetts 211. But the policy here involved is the policy of the United States. It is not a matter that the States can regard or disregard at their will."

In the most recent federal case on this subject, *Mitchell* v. *Flintkote Co.,* decided January 4, 1951, 185 F. 2d 1003, Judge Swan, speaking for that Court, indicated in positive language that the rule of public policy relating to federal contracts which affect federal policy must be a rule of federal law to insure uniformity, and in this connection said:

> "The Flintkote agreement with Mitchell was made in New York City, and in his brief plaintiff cites two New York cases[7] which indicate that the New York courts would hold Order No. 9001 not decisive of the issues in this case. But this does not alter our conclusion. Order No. 9001 state a federal rule of public policy and federal, not state, law governs its applicability. The 'checkerboard' pattern imposed by *Erie R. Co.* v. *Tompkins* is necessarily unsuited to matters subject to federal regulation, and hence state law does not control the disposition of suits which, although they are between non-governmental parties and are brought in a federal court on the basis of diversity of citizenship, involve interpretation or application of federal law. If, as must be conceded, the national government has power

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[7] *Leahy* v. *Brooklyn Waterfront Terminal Corp.,* 272 App. Div. 781, 69 N.Y.S. 2d 596; *Singer* v. *Bruner-Ritter, Inc.,* 180 Misc. 928, 42 N.Y.S. 2d 881, affirmed 266 App. Div. 953, 44 N.Y.S. 2d 589, appeal denied 266 App. Div. 993, 45 N.Y.S. 2d 411.

> to protect itself against contracts of the kind here in question, the protection afforded must be uniform in all its ramifications, including a uniform rule governing the enforceability of contingent fee contracts between principal and agent."

The grounds of this Petition are substantial, because if the judgment entered against Coyne is allowed to stand, it will constitute a precedent clearly in conflict with the overriding and paramount federal rule. The incidental fact that this case was tried in a state court rather than a federal court does not make valid what the federal courts have uniformly held invalid. The state courts should follow the uniform rule required by the federal decisions, and this case presents the admirable opportunity to this Honorable Court to indicate for the first time that this federal rule is paramount and is decisive and binding upon the state courts.

Conflict of Decisions in the State Courts, Suggesting the Necessity of an Authoritative Announcement by the Supreme Court of the Paramount Federal Law and Federal Policy, Thus Providing a Uniform Rule Throughout the United States.

In New York the courts have applied the so-called State Rule which requires proof of unlawful influence or corrupt means in the performance of the agreement, and they have also applied the federal rule which strikes down these contingent fee agreements for the procurement of government contracts as invalid and against public policy because of their corrupt tendency regardless of the means used in the performance of the agreement. Cases in the first category are:

Leahy v. *Brooklyn Waterfront Terminal Corp.*, 272 App. Div. 781, 69 N.Y.S. 2d 596;

Singer v. *Bruner-Ritter, Inc.*, 180 Misc. 928, 42 N.Y.S. 2d 881, affirmed 266 App. Div. 953, 44 N.Y.S. 2d 589, appeal denied 266 App. Div. 993, 45 N.Y.S. 2d 411;

Bradford v. *Durkee Marine Products Corp.*, 180 Misc. 1049, 40 N.Y.S. 2d 448.

The federal rule was followed in *O'Connor* v. *Hudson River Day Line* (1945), 269 App. Div. 960, 58 N.Y.S. 2d 175.

In Florida the Supreme Court first followed the federal rule in *Wechsler* v. *Novak* (1946), 26 So. 2d 884. In *Robert & Co., Inc.* v. *Mortland* (1948), 33 So. 2d 732, the Court held that a contingent fee for the procurement of a government contract was not invalid, per se, thus departing from its earlier decision.

New Jersey also has expressed divergent views. The highest court of that state, in *Davidson* v. *Button Corp.* (1945), 44 A. 2d 800, affirmed 46 A. 2d 797, followed the federal rule. In *McCabe* v. *Kupper,* (1949), 66 A. 2d 629, a lower court did not follow the federal rule in a case not involving federal procurement, although the federal rule was followed in *Weehauken Realty Co.* v. *Hass,* 13 N.J. Misc. 231, 177 A. 434, also a case not involving federal procurement. In *Stone* v. *Wm. Steinen Co.* (N.J., 1946), 45 A. 2d 486, the court followed the federal rule.

Hall v. *Anderson* (1943), 18 Wash. 2d 625, 140 P. 2d 266, approved a contingent fee for the procurement of federal contracts where there is no proof of undue influence or improper means in the performance of the agreement.

In *Ebeling* v. *Swaine Mfg. Co.* (1948), 357 Mo. 549, 209 S.W. 2d 892, the court held a contingent fee agreement for the procurement of government contracts valid.

In *Glass* v. *Swimaster Corp.* (N.D., 1946), 21 N.W. 2d 468, the Supreme Court of North Dakota upheld the validity of a contingent fee agreement.

Conflict in Federal Decisions Arising from Misinterpretation of Oscanyan v. Winchester Repeating Arms Co. (1880), 103 U.S. 261, also Suggesting the Need for an Authoritative Clarification by the Supreme Court on This Important Matter of Public Policy.

Oscanyan v. *Arms Co.* is discussed hereafter in the accompanying Brief. Some courts have considered the dictum in that case as a modification of the so-called federal rule which holds invalid, per se, any agreement for the procurement of government contracts on a contingent fee basis. Thus, *J. E. Hanger, Inc.* v. *Fitzsimmons* (1921), 273 F. 348, held valid a contingent fee agreement, relying on the language found in *Oscanyan* v. *Arms Co.* *Dodge* v. *Allison* (1926), 13 F. 2d 588, also erroneously viewed the *Oscanyan* decision as a departure from the doctrine announced in *Providence Tool Co.* v. *Norris* (1864), 2 Wall. 45.

In *Noonan* v. *Gilbert* (1934), 68 F. 2d 775, the Court refused to allow the taxpayer a deduction for federal income tax purposes for the amount of contingent fees paid for the procurement of government contracts.[8] On the other hand, without citing this case, the Tax Court in *Aetna Standard Engineering Co.* v. *Commissioner* (1950), 15 T.C. ....., No. 42 (CCH Dec. 17,847), allowed such fees as a proper deduction.

Of course, there is a long line of decisions in the Courts of Appeal of the various circuits following the federal rule, denying the validity of contingent fee agreements for the procurement of government contracts.

Mitchell v. *Flintkote Co.* (1951), (CA. 2) 185 F. 2d 1003;

Reynolds v. *Goodwin-Hill Corp.* (1946, CA. 2), 154 F. 2d 553;

Bradley v. *American Radiator & Standard Sanitary Corp.* (1947, CA. 2), 159 F. 2d 39;

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[8]See also, *Textile Mills Securities Corp.* v. *Commissioner* (1941) 314 U.S. 326, 338.

Silverman v. *Osborne Register Co.* (1946, C.A., D. Col.), 155 F. 2d 879;

United States v. *Paddock* (1949, CA7), 178 F. 2d 904, rehearing denied 180 F. 2d 121;

McNeill v. *Nevious* (CA D. Col. 1950), 187 F. 2d 81;

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Gesellschaft Fur Drahtlose Telegraphie MBH v. *Brown*, (C.A., D. Col.) 78 F. 2d 410;

Brown v. *Gesellschaft Fur Drahtlose Telegraphie MBH*, 104 F. 2d 227, certiorari denied 307 U.S. 640.

We respectfully suggest that the conflict of decisions in the state courts arises from the unfortunate dictum appearing in *Oscanyan* v. *Arms Co.* This present case presents for the first time an opportunity for this Court to provide a definite and positive rule with respect to these contingent fee agreements and to clarify the statements appearing in *Oscanyan* v. *Arms Co.*, and thereby provide a uniform rule for the federal and state courts with respect to contingent fees for the procurement of federal contracts.

MAJORITY AND MINORITY OPINIONS BELOW

The Majority Opinion of the Appellate Court of Illinois (2 to 1) and also the Opinion of the dissenting Justice in that Court are set out in the Record at pages 419-443. Those Opinions are also reported in 343 Ill. App. 420, 99 N.E. 2d 370.

THE QUESTIONS PRESENTED

The questions presented on this Petition may be stated as follows:

1. Is not Buckley's claim entirely illegal and void, as against public policy, in that "it involves the payment of

contingent fees for securing War contracts with the Federal Government"? (See the holding of the trial court, R. 47.)

2. Is not the holding of the Appellate Court of Illinois (in reversing the trial court) in conflict with the general doctrines of law concerning contingent fees for war contracts laid down by the federal courts? (See *Mitchell* v. *Flintkote Co.*, 185 F. 2d 1003.)

3. Is Buckley a "bona fide established commercial or selling agency maintained by the contractor", within the meaning of Executive Order 9001, in view of the fact that (i) his employment by Coyne was for the sole purpose of procuring federal contracts, (ii) the agreement did not contemplate any continuing relationship with Coyne and in fact provided a limited existence, (iii) Buckley had never been previously employed by Coyne as a selling agent, and (iv) Buckley was not engaged generally to solicit students in behalf of Coyne?

4. Is the judgment of the Appellate Court of Illinois erroneous because it did not follow the paramount federal law consistently announced in the decisions of this Court?

REASONS FOR ALLOWANCE OF CERTIORARI

1. The state court here has decided a federal question of substance and importance in a way not in accordance with the applicable decisions of this Court.

2. This Court is here presented squarely (and for the first time, it is believed) with the question of construing and applying Executive Order 9001 in such important cases as the one at bar; accordingly this Court should determine and settle the law with respect to that important Presidential regulation.

3. The present state of the law with respect to the construction and application of Executive Order 9001 is un-

certain and controverted, and that uncertainty should be settled by this Honorable Court.

CONCLUSION

For the reasons set forth above, your petitioner respectfully prays that a writ of certiorari be issued, directed to the Appellate Court of Illinois, First District, commanding that Court to certify and send to this Court for review and determination a full and complete transcript of the record and of all proceedings therein in Case No. 45259 in that Court; and that upon review by this Honorable Court the judgment of the last named Court may be reversed; and that your petitioner may have such other and further relief in the premises as may be meet and just.

Respectfully submitted,

COYNE ELECTRICAL SCHOOL, INC.,
Petitioner,

By IRWIN N. WALKER

PETER B. ATWOOD
Its Attorneys

URBAN A. LAVERY
Of Counsel

Dated at Chicago
December 5, 1951.

NO. .....

IN THE

Supreme Court of the United States

COYNE ELECTRICAL SCHOOL, INC.,
Petitioner,

VS.

F. J. BUCKLEY AND E. H. BUCKLEY, DOING BUSINESS AS F. J. BUCKLEY AND COMPANY,
Respondents.

BRIEF IN SUPPORT OF FOREGOING PETITION

THE FACTS IN THIS CASE DEMONSTRATE BEYOND QUESTION THAT BUCKLEY'S CLAIM FOR CONTINGENT FEES FOR HIS "AGENCY" IN PROCURING FEDERAL CONTRACTS VIOLATES THE PUBLIC POLICY OF THE UNITED STATES AND EXECUTIVE ORDER 9001.

SHORT STATEMENT OF THE FACTS

On March 11, 1942, Lewis, President of the Coyne School, met Buckley in Washington for the purpose of discussing Signal Corps training contracts and the possibility of employing Buckley as Coyne's agent to procure Signal Corps training contracts on a contingent fee basis (R. 60-68). Prior to that meeting Coyne had already procured two government training contracts, one of which it had just recently procured for the training of 200 Signal Corps troops at the Coyne School at 25¢ per student hour (R. 63).

At this meeting Buckley stated to Lewis that he had recently procured a contract in behalf of National Schools at 40¢ an hour (R. 61). Lewis wrote two letters to Buckley personally (Pls. Ex. 4 and 5, R. 68-69). These letters Lewis handed to Buckley in Washington on March 14, 1942. Pls. Ex. 4 was a mere letter of introduction, so that Buckley would not have to disclose to the Army personnel his contingent fee arrangement. Pls. Ex. 5 provided for a contingent fee for the procurement of government contracts at the rate of 35¢ or more per man-hour of instruction. Coyne never secured a contract at this rate.

Prior to World War II, Buckley had no experience in this highly technical field of vocational training. His business for years had been that of a real estate broker in Los Angeles, California.[1] He had never represented a vocational training school, and prior to the war had never negotiated contracts with the United States Government for anyone. Buckley's experience in representing schools and in procuring contracts with the United States Government for technical war training is illustrated by the following question and the answer thereto (Original Record, p. 628; omitted from Record):

> "Q. Prior to the month of September, 1941, how much skill and experience did you have and acquire in representing schools who might be prospective contractors with the government for this work that the Coyne was doing eventually for the government, Mr. Buckley?
>
> "The Witness: I did not have any and did not represent that I had any."

[1]The original transcript shows three photographs of Buckley's real estate office in the outskirts of Los Angeles (R. 59, 68; Defts. Ex. 2, 3 and 4). Those photographs give a good visual impression of Buckley's business activities from the year 1922 down to the time he went to Washington.

In view of the dominant issue of public policy in wartime involved in this case, it is also pertinent to contrast Buckley's pre-war earnings with the lush and extravagant contingent fees claimed in this case. On cross-examination Buckley was forced to admit that during the pre-war years of 1939 and 1940 his total business income (that is, "gross" income before deducting expenses) ran from $10,000 to $15,000 for each of those years.[2] In contrast with these modest figures, Buckley testified he expected to recover around $200,000 in this case—which would be for part-time services for about six months' work in Washington, in wartime.

From the time Lewis first met Buckley until June 1942, Buckley did not have any office in Washington. In order to have a place to receive his calls, he used the facilities of the Army and Navy Club in Washington.[3]

According to the complaint in this case, and as established by the testimony, Buckley's representation of Coyne was limited to the procurement and so-called servicing of contracts with the United States in connection with the war training program. He did not represent Coyne generally in the procurement of students, and was not in any sense a salesman, representative or broker of the Coyne School.[4]

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[2]See Original Record pp. 541-547.

[3]Buckley's letters from the time he went to Washington in January 1942 down to June 1942, are all written on the letterhead of the Army and Navy Club. See his own Exhibits Nos. 26, 27, 28, 31, 32, 37, 41, 42 and 57. Buckley's Exhibit 63 shows that it was not until June 3, 1942 that he acquired his own office in the Union Trust Building in Washington, and for the first time had a letterhead of his own.

[4]The Coyne School had never in its entire history employed any "agent" whatever to solicit students, but on the contrary had always relied exclusively on advertising to secure its students. Mr. B. W. Cooke, the President of the Coyne School, testified positively to that effect. He said Buckley was the first person ever to represent them in such a "similar employment". (See R. 344.)

The question that occurs to any practical person is, Why would a school such as Coyne, which ranked among the upper 10% of all the schools in the country qualified to participate in this military program, ever engage Buckley, a total outsider and who admittedly according to his own testimony, knew nothing about vocational training prior to the war? The answer is simple: It was an intimation that Buckley's influence would have an effect upon the letting of government contracts for the training of students in private vocational schools. This is particularly so in view of the fact that Coyne had already procured two contracts with the United States Government for the training of military students at its school; one of these had been procured in 1941, and the other committed on March 3, 1942 as a result of conferences which Lewis had with Colonel Rooks as early as January 1942. Nor can we treat too lightly the fact that Buckley was a captain in World War I (R. 50-51), and that he would use to advantage such acquaintances as those associations created. His friendship with the procurement officers[5] on the day of Lewis' first visit with Buckley extremely impressed Lewis, even according to Buckley's own statement: "He [Lewis] said he was favorably impressed with the attitude displayed by Major Rooks and he said he was pleased with the apparent friendly attitude that existed in relation to myself and that office." It was this friendly attitude which prompted Lewis to ask Buckley, "Can you not get me 35 cents or 40 cents for these 200" (Lewis had previously agreed with Rooks to train military students for 25¢ an hour). To this Buckley replied, "And I said I would do my best to do so . . ." (R. 64-65).

It appears clear that Buckley sold Lewis on the idea at that first meeting on March 11, 1942 in Washington that Lewis' price to the Signal Corps of 25¢ an hour was too

[5]See, for example, R. 54: "I did not limit myself to any particular branch of the Army. My contracts were quite general."

low, and that Buckley could get higher rates. In anticipation of that assurance from Buckley, Lewis agreed to pay Buckley 5¢ per man-hour on all contracts for 35¢ or more per hour. The inference is clear, and, indeed, Buckley's own testimony shows, that Buckley's efforts on behalf of Coyne were not primarily to secure troops for training, as Coyne had demonstrated its own ability on that point, but to secure a higher price per man-hour of instruction. On this point Buckley testified: "I told him since the one contract I had at that time was 40¢ an hour for the same type of radio training that I hoped to get the same for him, and he said he would gladly pay the 5¢ an hour." (R. 61.)

This "hope" did not come to pass, and it soon became apparent from conversations with Colonel Rooks that Coyne would not be given any contracts for the training of troops at 35¢ or more per man-hour of instruction. This made it necessary for Buckley to persistently belabor Lewis for a modification of the March 12, 1942 agreement to provide him with a contingent fee for government training contracts procured by Coyne at a lower tuition rate. Shortly after the March 12, 1942 meeting, Coyne by its own efforts did procure a contract from the United States Government for the training of 800 Signal Corps troops at rates of 27¢ and 32¢ per man-hour of instruction.

Buckley came to Chicago March 21, 1942 (R. 77) for the purpose of getting his commission agreement modified to cover the 800-student contract which Coyne had then received. Buckley himself at that conference in Chicago typed a letter which he asked Lewis to sign (Pls. Ex. 9, R. 80-82), which would have reaffirmed the 5¢ per man-hour contingent fee, would have paid Buckley 2¢ and 3½¢ per man-hour on the 800-student contract, and would have expressed Coyne's hope that future contracts would be received at a higher rate. *This draft letter Lewis absolutely refused to sign* (R. 80).

Buckley's own testimony shows that he continued thereafter to insist that the arrangement between himself and Coyne must be reduced to writing. Thus, some days later, in a long letter from Los Angeles, on March 30, 1942 Buckley urged a further revision of his March 21 draft proposal; he asked Lewis to insert therein some fictitious language designed solely to plow around Executive Order 9001. This purpose is pretty obvious because Buckley himself testified he first learned of Executive Order 9001 on March 29, 1942 (R. 315). Lewis, however, completely ignored such devious methods. On April 25, 1942, Buckley again wrote Lewis (Pls. Ex. 32, R. 123) asking Lewis to write him "two letters", one of which was simply to be a self-serving statement to supplement the March 12, 1942 letter and the other to comprise the proposed commission contract on the 800-student government contract, and said:

> "It seems that it would be advisable for you to send me two personal letters. One dated around March 15th stating in substance, that supplementing your letter of March 12, 1942, you appointed me with the full knowledge that I have no Political or other influence with Government Officers and that I have a bona fide sales and commercial organization and that my executive ability and business knowledge of conditions in Washington, due to my experience there should be helpful. The second letter should be dated prior to April 20th and simply state that the fee to be paid to me will be .02¢ per hour per man for Operators and .03½¢ per hour per man for Mechanics *on this particular group of 800, as per our agreement.*" (Italics supplied.)

Lewis again ignored this devious suggestion.

Here is the first clear evidence (less than three weeks after the parties had first met) showing that Buckley realized his entire arrangement for a contingent fee contract was on very dangerous ground. *Lewis consistently refused to follow any such suggestion or to sign any document containing such fabricated recital.*

SUMMARY OF ARGUMENT

UNDER THE FACTS AS STATED, ANY AGREEMENT TO PAY BUCKLEY A CONTINGENT FEE FOR PROCURING FEDERAL CONTRACTS IS WHOLLY VOID AS AGAINST PUBLIC POLICY.

This Honorable Court has consistently and flatly ruled that any agreement to pay a contingent fee for the solicitation of government contracts is wholly void and against public policy, whether or not there is present any undue influence or improper means in the solicitation of such contracts. By Executive Order 9001 Buckley is also foreclosed in his claim for contingent fees because he is not a "bona fide established agency maintained by the contractor". This conclusion follows from the fact that Buckley was never "maintained" by the contractor as such. The letter of March 12, 1942 simply provided for Buckley's agency for a period of one year with respect to the procurement of certain defined government contracts. Prior to that time Buckley had never been employed by Coyne, and his agency was limited to procurement of federal contracts. He did not in any sense represent Coyne as a general agent to solicit students generally for Coyne.

ARGUMENT

I

FEDERAL LAW, NOT STATE LAW, CONTROLS THIS CASE

The major error of the Majority Opinion below in sustaining the legality of Buckley's claim grows out of the primary error of that Court in applying the state law of Illinois to the case, rather than federal law. In taking that position the Majority Opinion cites and relies solely on

certain state court decisions[6] and ignores entirely all applicable federal decisions including the controlling decisions of this Court which will be discussed under Point II of this Brief.

This Point I is fully covered in the foregoing Petition under the heading, "Application of Supreme Court Rule No. 38, Par. 5(a)." That comment we think clearly demonstrates the error of the Court below in applying state law rather than federal law in arriving at its decisions, and accordingly we say no more about this phase of the case in this Brief.

II

THE ILLINOIS COURT TOOK A TOTALLY ERRONEOUS VIEW OF THE FEDERAL PUBLIC POLICY FORBIDDING FEES TO AGENTS FOR PROCURING GOVERNMENT CONTRACTS.

The second major error of the Majority ruling of the Illinois Court below was its totally erroneous view of the federal public policy forbidding contingent fees to agents under circumstances like those in which Buckley finds himself in this case. The majority of the Illinois Court held that Buckley's alleged contract for contingent fees would not be illegal unless there was direct evidence that "political or personal influence" was used or intended by the parties. Such is the express holding of the Majority Opinion below. And since there was no proof of such "influence," the Majority below held in favor of Buckley on this question of public policy.

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[6]The Majority Opinion cites and relies upon the following five state cases, in spite of the fact that these cases are totally irreconcilable with the federal rule: the Illinois case of *Lewy* v. *Standard Plunger Elevator Co.*, 296 Ill. 295, 129 N.E. 775; the Missouri case of *Ebeling* v. *Swaine Mfg. Co.*, 209 S.W. 2d 892; and three cases from New York, *Bradford* v. *Durkee Marine Products Corp.*, 40 N.Y.S. 2d 448; *Singer* v. *Bruner-Ritter, Inc.*, 42 N.Y.S. 2d 881; and *Leahy* v. *Brooklyn Waterfront Terminal Corp.*, 69 N.Y.S. 2d 596.

This Honorable Court since the Civil War, has uniformly held in the cases in which this doctrine called for expression, that this rule of public policy applies, irrespective of whether or not the parties to such employment contract actually contemplated the use of, or used, improper means, solicitation or influence in the procurement of such contracts. This rule may be described as the federal rule, and has been followed by many of the state courts.

Under such contingent fee agreements it was early seen that a vicious element is introduced under which the plaintiffs' compensation is measured by the amount of the contract and not by the value of the services performed. The fact that the compensation is dependent upon the success of the venture is a tremendous inducement to the agent to take whatever steps are necessary to secure the desired object, including the use of improper influence upon public officials. Thus is violated the primary rule of public policy that the only consideration which should enter into the letting of government contracts is the procurement of the best services or goods at the best price.

It would be simple enough to adopt the principle that only where an agent actually employed improper influence to secure a government contract would he be denied recovery upon a contingent fee agreement were it not for the fact that when improper means are employed or improper influence is brought to bear upon public officials to secure government action, it is almost always well concealed. For this reason, the courts have not found it practicable to draw any distinction between actions upon contracts in the performance of which improper influence was used and those in which it was not, for more often than not, the court would be unable to discover the presence of improper conduct. The only way to insure against such practice is

to deny validity entirely to all contingent fee arrangements for the purpose of obtaining government contracts.

The Doctrine of Public Policy Established by This Court

This doctrine has been formulated by this Court in three leading cases. These are, *Providence Tool Co.* v. *Norris* (1864), 2 Wall. 45, 69 U. S. 45; *Oscanyan* v. *Arms Co.* (1880), 103 U. S. 261; and *Hazelton* v. *Sheckells* (1906), 202 U. S. 71. In another series of three leading cases, all dealing with contingent compensation to attorneys for purely professional services in connection with claims against the United States, this Court took occasion to explain and to distinguish the doctrine first announced in *Providence Tool Co.* v. *Norris*. These cases are, *Trist* v. *Child* (1874), 88 U. S. 441; *Wright* v. *Tebbitts* (1875), 91 U. S. 252; and *Stanton* v. *Embrey* (1876), 93 U. S. 548. In two other cases this Court reaffirmed the doctrine of *Providence Tool Co.* v. *Norris*, but found it inapplicable in the case of the solicitation of government contracts by principals as distinguished from the solicitation of government contracts on a contingent fee basis by agents. These cases are, *Valdes* v. *Larrinaga* (1914), 233 U. S. 705, and *Steele* v. *Drummond* (1927), 275 U. S. 199.

A brief summary of each of these cases and of the more recent decisions of the Supreme Court of the United States follows.

The doctrine that any agreement to pay an agent a fee contingent upon the success of procuring a government contract is void and against public policy was first announced in the opinion of Mr. Justice Field in *Tool Co.* v. *Norris* (1864), 2 Wall. 45, 69 U. S. 45. In this case Norris much like Buckley struck upon the idea that Washington would be a good place to go to for the purpose of exploiting the war program. The Civil War was then in progress, and

Norris who had had no previous dealing with the United States Government and had never solicited contracts with the United States Government came to Washington for the express purpose of exploring the possibility of getting contracts with the War Department (p. 46). For this purpose Norris exerted every effort to have influential persons, including Senators, introduce him to the Secretary of War, and he finally got a contract with the War Department for muskets. His employment contract with the Providence Tool Company was for so much per musket, contingent upon the success of getting a contract with the United States Government. Mr. Justice Field, stated this Court's position emphatically in these words (p. 54):

> "The question, then, is this: Can an agreement for compensation to procure a contract from the Government to furnish it supplies be enforced by the court? We have no hesitation in answering the question in the negative. . . .
>
> ". . . *Agreements for compensation contingent upon success, suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil, and strikes down the contract from its inception.* . . .
>
> ". . . all agreements for pecuniary considerations to control the business operations of the government, . . . are void as against public policy, *without reference to the question, whether improper means are contemplated or used in their execution. The law looks to the general tendency of such agreements, and it closes the door to temptation, by refusing them recognition in any of the courts of the country.*"

Several years later this Court in *Oscanyan* v. *Arms Co.* (1880), 103 U. S. 261, had occasion to consider again the identical problem presented in the *Tool Co.* case. In this case the plaintiff was consul-general to the Turkish govern-

ment at the port of New York. The Turkish government was then sending a mission to the United States for the purpose of making a survey of firearms. The head of that mission was a personal friend of the consul-general, who through his influence was able to get the special envoy of the Turkish government to recommend defendant's rifles. However, before the recommendation was made the consul-general secured an agreement from the defendant to pay him a fee for the procurement of contracts with the Turkish government, contingent upon the success of such procurement. This statement of the case summarizes plaintiff's counsel's opening statement to the court and to the jury, and on the basis of this opening statement defendant's counsel moved for a directed verdict, which the trial court promptly granted.

Mr. Justice Field again spoke for the court, and in affirming the decision of the trial court, based the Court's decision squarely upon *Tool Co.* v. *Norris, supra.* The Court held that the contract was unenforceable and void and against public policy because of the corruptive tendency of contingent compensation contracts for the procurement of government business.

The doctrine was crystalized in *Hazelton* v. *Sheckells* (1906), 202 U. S. 71. Mr. Justice Holmes delivered the opinion in that case, in which the plaintiff had an option upon a certain parcel of property which Congress was then considering using for the location of a hall of records and the time limit of the option was the term of the then present session of Congress. Obviously, the plaintiff in that case would not exercise the option unless he had sold the property first to the Government at a higher price, and in this connection the contract between plaintiff and defendant contemplated that the plaintiff would perform extensive services in order to induce Congress to accept the plot. No political influence was suggested or intimated. Concerning

these extended services which were contemplated by the agreement, Mr. Justice Holmes said:

> ". . . We assume that they were legitimate, but the validity of the contract depends on the nature of the original offer, and whatever their form, the tendency of such offers is the same. The objection to them rests in their tendency, not in what was done in the particular case. Therefore, a court will not be governed by the technical argument that when the offer became binding, it was cut down to what was done, and was harmless. The *court will not inquire what was done. If that should be improper, it probably would be hidden, and would not appear. In its inception, the offer, however intended, necessarily invited and tended to induce improper solicitations, and it intensified the inducement by the contingency of the reward. Marshall* v. *B. & O. R. R.*, 16 How. 314, 335, 336."

This Court has had occasion to give expression to the federal rule in two additional cases. These are *Muscahny* v. *United States* (1945), 324 U. S. 49, and *American Seating Co.* v. *Zell* (1944), 322 U. S. 709.

The *Muscahny* case involved an attempt on the part of the Government to apply the doctrine of *Tool Co.* v. *Norris* in a situation in which the United States Government itself had agreed to pay a contingent fee. This the Government contended was against public policy, and that the contingent fee was necessarily a part of the option price and therefore vitiated the entire agreement. This argument a majority of the Court refused to follow, on the theory that the Government was setting up its own policy and that this Court could not in effect determine a matter of public policy for the Government itself without a supporting statute. However, the Court cited with approval the doctrine of *Tool Co.* v. *Norris,* and in this connection said:

> "Contingent fee contracts to secure Government business for the employer of the recipient have been

held invalid because of their tendency to induce improper solicitation of public officers and the exercise of political pressure. *Steele* v. *Drummond,* 275 U. S. 199."

In further support of this rule, the Court cited *Trist* v. *Child; Hazelton* v. *Sheckells,* and *Crocker* v. *United States* (1916), 240 U. S. 74.

In *American Seating Co.* v. *Zell* (1944), 322 U. S. 709, Mr. Zell, in October, 1941, called upon the American Seating Company at its request to discuss the question of procurement of Government contracts in connection with the war program. These discussions led to the execution by the company of a letter of employment at a fixed compensation of $1,000 per month, to include expenses. The plaintiff, Mr. Zell, in an affidavit accompanying a motion for summary judgment, stated that over and above the letter there was an oral agreement to pay him from 3% to 8% of the contract price on any Government contracts which he might procure in behalf of American Seating Company.

In the District Court, 50 F. Supp. 543, and in the Court of Appeals, 135 F. 2d 641, the case went off on the issue of the parol evidence rule, it being contended that the written contract was complete on its face and had been performed and that no evidence of the parol agreement could be admitted. The complaint was dismissed in the District Court, the judgment being reversed by the Court of Appeals. Upon the granting of *certiorari* by the Supreme Court of the United States, the case was extensively briefed, both upon the parol evidence rule and the contention that the contract, shown by Zell's affidavit, was contrary to the public policy rule of the United States, and void. Mr. Zell, in his affidavit, went to great lengths to point out his previous experience and the substantial executive position he then held, under which his compensation ran to $57,000 an-

nually, prior to entering into the agreement with American Seating Company. He had considerable skill and experience in the procurement of large industrial contracts. He was an able engineer and technician.

This Court in a *per curiam* opinion indicated that two of the Justices were of the opinion that the judgment of the Court of Appeals should be affirmed. Seven were of the opinion that the judgment should be reversed and the judgment of the District Court affirmed—four because proof of the contract alleged in the plaintiff's affidavits is precluded by the applicable state parol evidence rule, and three "because the contract is contrary to public policy and void; see *Tool Company* v. *Norris*, 2 Wall. 45, 54, 17 L. Ed. 868; *Hazelton* v. *Sheckells*, 202 U. S. 71, 79, 26 S. Ct. 567, 568, 50 L. Ed. 939, 6 Ann. Cas. 217; Executive Order No. 9001, Tit. II, par. 5, 6 Fed. Reg. 6788, 50 U.S.C.A. Appendix § 611 note; War Department Procurement Regulations, 10 Code Fed. Reg. (Cum. Supp.), sec. 81.1181."

This case represents the latest statement of this Honorable Court in support of the federal rule of public policy first announced in *Tool Co.* v. *Norris*.

In two cases, *Valdes* v. *Larrinaga* (1914), 233 U.S. 705, and *Steele* v. *Drummond* (1927), 275 U.S. 199, representing the third group of cases on this subject mentioned above, this Court held that where individuals participate in a joint venture, as principals, to procure a government contract, the fact that one of the principals' interest in the venture is contingent upon securing the contract does not invalidate the joint venture agreement. Neither of these cases supports Buckley's claim.

In the *Valdes* v. *Larrinaga* case, the plaintiff was engaged to assist in procuring a franchise for the purpose of developing electric power, and in this connection he was to help in such things "as plans, projects, and in everything

concerning the technical part thereof". For this purpose he was to receive a 10% interest in the profits of the franchise. Mr. Justice Holmes held that this contract did not violate public policy under such decisions as *Hazelton* v. *Sheckells,* 202 U.S. 71. The opinion of the Court in that case was delivered by Justice Holmes, and he, of course, was well aware of the very positive statements which he made in that opinion concerning the invalidity of contingent fee agreements.

That same situation applies in *Steele* v. *Drummond,* 275 U.S. 199. The distinction between this kind of a case and the procurement of a contract on a contingent fee basis is clearly set forth by the Court itself in the following comments:

> "The contract here under consideration is to be distinguished from those dealt with in *Tool Company* v. *Norris,* 2 Wall. 45; *Trist* v. *Child,* 21 Wall. 441; *Meguire* v. *Corwine,* 101 U.S. 108; *Oscanyan* v. *Arms Co.,* 103 U.S. 261; *Hazelton* v. *Sheckells,* 202 U.S. 71; and *Crocker* v. *United States,* 240 U.S. 74. The claims there considered were under contracts requiring or contemplating the obtaining of legislative or executive action as a matter of favor by means of personal influence, solicitation, and the like, or by other improper or corrupt means.
>
> "But this case is different. Drummond was not employed by Steele or by the railroad company to secure the passage of the ordinances. *He was interested as an owner of property.*"

The Court thus pointed out that both of the parties were acting as principals, each for his own benefit, and the situation was not at all like the contingent fee cases illustrated by *Tool Co.* v. *Norris* and the related cases.

The distinction here urged in these cases is recognized in the dissenting Opinion, but is not discussed in the Majority Opinion of the Appellate Court.

The Binding Rule for All the Courts—State and Federal

If the case at bar had been tried in a federal court in Illinois (as there was a clear right to do since Buckley is a resident of California), the doctrine of *Tool Co.* v. *Norris* and the other cases cited above would have been applied to Buckley's claim, and his alleged contract would promptly have been pronounced illegal and void. Buckley's claim was actually held illegal and void by the final decree of the trial court, which specifically so held, and dismissed Buckley's claim "for lack of equity" (R. 48). The able dissenting Opinion in the Illinois Appellate Court holds that the trial court judgment should have been affirmed. The result is that of the four Illinois Judges who have passed upon this case two have held Buckley's claim illegal and void on the ground of federal public policy, while two of these Judges (who happen to be a majority of the Appellate Court) have ruled the other way.

In view of the clear conflict between what would have been the result of this case if tried in the federal court in Illinois and the result which is shown by this Record, it would seem appropriate for that reason alone, we say, that this Court should grant certiorari and review the judgment below. It should not be possible that in a state such as Illinois there can be any "checker-board pattern"[7] as to the decisive rule of public policy applicable to this case. All the courts in Illinois, state and federal alike, should be bound by the doctrine which this Court has repeatedly announced, that contingent fee contracts like that claimed by Buckley are entirely illegal and void. This should be the law notwithstanding the claimed mitigating fact which the Majority Opinion found that Buckley was not guilty of

[7]See the use of this helpful phrase, "checker-board pattern" in the able Opinion of the United States Court of Appeals for the Second Circuit in the recent *Flintkote* case cited and discussed in Point III of this Brief.